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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/255,213    02/22/99    MARTIN    J    33688US

IM52/0116  
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EXAMINER

PASTERCZYK, J

ART UNIT

PAPER NUMBER

1755

DATE MAILED:

01/16/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/255,213

Applicant(s)  
Martin

Examiner  
J. Pasterczyk

Group Art Unit  
1755



☒ Responsive to communication(s) filed on Dec 4, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-22 is/are pending in the application.

Of the above, claim(s) 11-18 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-10 and 19-22 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-22 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 6

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1755

1. This Office action is in response to the amendment and IDS filed 12/4/00 and refers to the first Office action mailed 7/5/00.

2. Applicant's election with traverse of group I, claims 1-10 and new claims 19-22 in Paper No. 5 is acknowledged. The traversal is on the ground(s) that there would be no further burden to search the process of use claims. This is not found persuasive because olefin polymerization processes are classified in a different class and are handled by a different art unit than catalyst claims, hence there in fact is a different search between olefin polymerization processes and catalysts.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 1-10 and 19-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 (amended), IVB, VB and VIB should be changed to the modern notation of 4, 5 and 6 respectively for clarity's sake; also, the "and" joining the last two should be --or--.

In claim 19, cancel "selected from" and change "and" to --or-- for closed Markush language.

In claim 21, insert --dienyl-- after "cyclic".

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 1755

5. Claims 1-10 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over each of Brant and Luciani as cited in and for the reasons of record given in paragraph 9 of the first Office action.

6. Applicant's arguments filed 12/4/00 have been fully considered but they are not persuasive.

The principle argument appears to be that substituting a hydrogen atom for an alkyl or aryl group on the amido nitrogen would not have been obvious to one of ordinary skill in the art. However, case law is consistent that substitution of a methyl group for a hydrogen is obvious absent showing of unexpected results; In re Lincoln, 126 USPQ 477, 53 USPQ 40 (CCPA 1942), Ex parte Henkel, 130 USPQ 474, (POBA 1960), as well as 6 other cases. No such showing has been made or pointed out to the examiner. Instead applicants rely on mere attorney's argument, which is insufficient.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 1755

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Pasterczyk whose telephone number is (703) 308-3497. Our fax number is 305-5433.

  
Mark L. Bell  
Supervisory Patent Examiner  
Technology Center 1700



J. Pasterczyk

January 12, 2001